THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.14838 OF 2004

Between:

Md.Khaja Nooruddin, s/o Khaja Gulam Mohiuddin,

Aged about 40 years, working as Driver at P.G.College, Karimnagar, Kakathiya University, Karimnagar District.

....Petitioner

A n d

Kakatiya University, Vidyaranyapuri,

Warangal, represented by its Registrar,

Warangal,Warangal District., A.P.

.... Respondent

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ORAL ORDER:

Petitioner claims to have joined the services of the respondent-University in 1999 as a daily wage driver and is continuing since then with intermittent breaks in service. An earlier termination of the petitioner's service was pursued before the Labour Court, which according to the petitioner passed an Award directing his reinstatement into service with all consequential benefits with

continuity of service and backwages. Aggrieved by the Award, the respondent-University filed a writ petition. This Court suspended the operation of the Award, on a condition of the petitioner therein complying with the mandate of Section 17-B of the Industrial Disputes Act, 1947. After the interim order of this Court in W.P.No.7267 of 2004, the respondent was continuing the petitioner as a daily wage driver. Petitioner also filed W.P.No.11448 of 2000 seeking regularization of his service in the post of a driver.

While so, the respondent issued the impugned Notification, dated 13-04-2004, inviting applications from "*internal eligible regular employees with a minimum of 2 years service for the temporary appointment of the following posts".* Among the posts for which applications were invited, as above, are the posts of drivers in the university service. Petitioner fulfills the other qualifications as to experience for recruitment to the temporary post of driver. However, he is ineligible to apply on account of the restriction of applicants to the category of internal eligible regular employees with minimum 2 years of service. The petitioner is not an internal regular employee with 2 years of service. He is therefore ineligible to apply. Petitioner contends that the eligibility criteria of an applicant being a regular employee of the university with a minimum of 2 years service is irrational, perverse and misconceived.

The respondent has filed counter-affidavit running into 6 pages spread over 6 paragraphs, but nothing is stated therein as to why, for the posts of temporary drivers the eligibility criterion of being a regular employee with a minimum of 2 years service is prescribed. It is not disputed that even the temporary posts of drivers in the respondent institution constitute a public office and recruitment of such offices is required to answer the public law discipline of constitutionality and rationality.

The petitioner apprehends that the above qualification has been prescribed only with a view to confer favours on a selected class of existing regular employees of the university and deprive persons like him, who were also otherwise eligible to compete. This apprehension of the petitioner finds sustenance in the absolute silence in the counter-affidavit as to the rationale of the qualification prescribed in the recruitment Notification, dated 13-04-2004.

In the considered view of this Court, the insistence by the respondent-

University that an applicant, for a temporary post of a driver in the respondent-University, must be an internal regular employee with a minimum 2 years of service is a requirement that is irredeemably irrelevant and perverse. The Notification is accordingly quashed. The respondent is, however, at liberty to notify afresh, calling for applications for recruitment as temporary drivers, prescribing eligibility criteria which are fair, transparent, rational and reasonably related to the object sought to be achieved by the recruitment. The criteria fixed should not result in hostile discrimination or invidious exclusion of an otherwise eligible class.

As the impugned Notification and the qualification criteria prescribed therein of limiting the recruitment to the posts of temporary drivers only to regular employees of the university who have put in a minimum of 2 years of service is grossly irrational, this Court considers it appropriate to allow the writ petition with costs in an amount of Rs.2,500/- (Rs.Two thousand five hundred only) payable by the respondent to the petitioner within 3 weeks from the date of receipt of a copy of this order. The respondent is at liberty to identify any officer or officers responsible for prescribing such irrational and irrelevant criteria and take appropriate administrative measures to prevent recurrence of such irrational behaviour in future.

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30-08-2005.

Lrkm